IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1728 OF 2004

Shri.Amin Hamid Inamdar]
Age 48 years, Niwas-54/368]
Ekta Nagar Co.Op.Hsg.Society]
Ganesh Nagar, Kandivali (W)]
Mumbai.]...Petitioner

Vs.

1. Shri.R.D.Shinde]
Dy.Commissioner of]
Police, Zone XI, Mumbai]
Mumbai.]
2. The State of Maharashtra]..Respondents

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Mr.U.N.Tripathi Advocate for Petitioner
Mr.A.S.Shitole, A.P.P. for State.

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 14,2004

ORAL JUDGMENT:

1. This Criminal Writ Petition is directed against the order of externment dated 15th May, 2004 passed by the Deputy Commissioner of Police Zone-XI, Mumbai. By the said order, the petitioner was externed from the limits of Greater Bombay, Suburban, Thane and Raigad Districts for a period of one year. The petitioner thereafter filed an appeal before the State Government which came to be dismissed by an order dated 27th July, 2004.

2. Shri.Tripathi, the learned advocate for the petitioner has contended that the externment of the petitioner deserves to be quashed on the sole ground that there is non-application of mind on the part of the appellate authority. Shri.Tripathi has pointed out that the externment order is based on one C.R. i.e. C.R.No. 332 of 2003 and two incamera statements which were recorded on 10th December, 2003 and 13th December, 2003. He has submitted that these facts are clearly stated in the show-cause notice. He has pointed out that there is no reference to any other C.R. in the show cause notice except C.R.No. 332 of 2003. However, the appellate authority in its order dated 27th July, 2004 dismissed the appeal on the ground that in the period between 2001 to 2003, three crimes have been registered against the petitioner as well as one chapter case is pending against him and thereafter two incamera statements have been recorded against him and thereafter, an order of externment has been passed. A specific reference has been made to C.R.No. 266 of 2002 under Section 354 of IPC and chapter case no.15 of 2002. However, neither C.R.No. 66 of 2002 nor chapter case no.15 of 2002 has been referred to in the show cause notice. No such particulars have been set out in the show cause notice and as such, the petitioner was denied an

opportunity to show cause in respect of this additional material. The appeal of the petitioner has been dismissed on the basis of extraneous material/ground. There is total non-application of mind on the part of the appellate authority. The said order therefore, deserves to be set aside and consequently, the continued externment of the petitioner cannot be sustained.

3. In this view of the matter, the continued externment of the petitioner is not called for. Rule is made absolute in terms of prayer clause (D). The continued externment of the petitioner is set aside.

[SMT.V.K.TAHILRAMANI,J.]